

## COMPANY DOCUMENTS

# Terms & Conditions of Trade

Updated 07/03/10

### Enclosed:

- 1.0 Terms & Conditions of Hire
- 1.1 Terms & Conditions of Sale



**bright\* Production Service Ltd - Terms and Conditions of Hire**  
**Updated: 31/12/2003**

- 1.1. IN THESE CONDITIONS...**
- 1.1.1. "Contract" means a contract for the hire of Equipment by the acceptance by bright\* of an order pursuant to Condition 2.
- 1.1.2. "Equipment" means the equipment described or any individual item thereof;
- 1.1.3. "Hire Charge" means the weekly charge payable by the Hirer to bright\* for the hire of Equipment, which is set out in the current bright\* catalogue, website or other material.
- 1.1.4. "Hire Period" means a period starting on the date that the Equipment is despatched to be collected by the Hirer and ending on the date on which the Equipment is returned to bright\*;
- 1.1.5. "Hirer" means the hirer of Equipment from bright\*;
- 1.1.6. "bright\*" means the company bright\* and other group companies.
- 1.2 The headings in these terms and conditions are for ease of reference only and shall not affect their interpretation.
- 2. ORDERS**
- bright\* shall only accept an order for hire of Equipment provided that it is in writing. Unless otherwise agreed, the written acceptance of the Hirer's order by an authorised employee of bright\* shall constitute the Contract, which shall be subject to these Terms and Conditions. Any Terms or Conditions in the Hirer's order to bright\* or other documentation of whatsoever kind which are inconsistent with these Terms and Conditions shall have no effect.
- 3. HIRE OF EQUIPMENT**
- 3.1. bright\* hereby hires to the Hirer the Equipment for the Hire Period at the Hire Charge.
- 3.2. bright\* reserves the right to supply equipment of a similar design to the Equipment.
- 3.3. All descriptions and specifications, drawings and particulars of equipment (including weights and dimensions) issued by bright\* are approximate only, and are intended only to present a general idea of the goods to which they refer and shall not form part of the contract. Due to continuing development, bright\* reserves the right to change the specifications without notice.
- 4. HIRE CHARGE**
- 4.1. The Hirer shall pay to bright\* - either in advance or on a weekly basis – a sum calculated by multiplying the appropriate Hire Charge for the Equipment by the Hire Period for such items of equipment. All hire charges are strictly 'nett' and are due and payable on an invoice submitted within 14 days. Charges run from day of dispatch until day of return and are based on a period of 1 week or part thereof irrespective of whether the goods are in use or not. A period of two days grace is normally given on collections and deliveries (i.e. collection Friday and return Monday).
- 4.2. The Hirer shall pay to bright\* any packaging and delivery charges where appropriate.
- 4.3. All sums due from the Hirer to bright\* hereunder shall be increased to include VAT at the current rate.
- 4.4. The Hirer shall pay bright\*'s invoices hereunder within 14 days of date of invoice. Time shall be of the essence in respect of the payment of all sums due hereunder.
- 4.5. bright\* reserves the right to charge the Hirer interest at the rate of 3% per annum above the mean base rate for the time being of the London Clearing Banks on all invoices which are not paid in accordance with Condition 4.4. such interest being calculated from a date 30 days after the date of invoice until actual payment

compounded quarterly and to be payable as well as before any judgement obtained in respect thereof.

**5 DELIVERY**

Any date and times quoted for the delivery of the Equipment are approximate only and bright\* shall not be liable for any delay in delivery of Equipment howsoever caused.

The Hirer shall conduct a reasonable inspection of the Equipment upon receipt. If such inspection reveals that the Equipment is damaged, or that some of the equipment has been lost, the Hirer shall notify bright\* and the carrier in writing within 3 days of the date of receipt. Damaged Equipment may be retained by the Hirer for inspection by the carrier provided that it shall be returned to bright\* on demand. If the Hirer fails to notify bright\* and the carrier in accordance with this Condition, or to return the equipment on demand, the Hirer shall pay to bright\* the full cost of repair or replacement of the Equipment or full rate hire until returned.

For hirers collecting and returning Equipment, bright\*'s normal working hours are Monday to Friday 10-00 am to 5:00pm, Saturday 10-00am to 1:00pm. There an answer-phone outside these time and an emergency telephone number.

**6 USE OF EQUIPMENT**

6.1 The Hirer shall ensure that the Equipment is installed and used by competent and qualified personnel in a manor which complies with any applicable statute, regulation or order from time to time in force affecting the Equipment including but not limited to the Health and Safety at Work Act 1974 and any statutory amendment or replacement of it.

6.2 The Hirer shall at its expense keep the equipment in good repair, condition and working order, fair wear and tear accepted. Without prejudice to the generality of the foregoing, the Hirer shall on a very regular business and certainly every week:-  
6.2.1. Inspect, test and clean the equipment.

6.2.2. Check and maintain wiring, mechanics and rigging of the equipment.

6.3 The Hirer shall not without the prior written consent of bright\* make any modification or alteration to the Equipment, or take equipment outside mainland Great Britain.

6.4 The Hirer shall allow bright\* to inspect the Equipment upon request during bright\*'s normal working hours.

6.5 The Hirer shall return all faulty lamps to bright\*. The replacement cost of the lamps will be charged to the Hirer if they are not returned.

**7 Ownership**

The equipment at all times shall remain the property of bright\* and the Hirer shall have no rights to the Equipment other than as hirer and the Hirer shall not do or permit or cause to be done any matter or thing whereby the rights of bright\* in respect of the Equipment are or may be prejudicially affected.

**8 LOSS, DAMAGE AND INSURANCE**

8.1. In the event of any loss or damage to the Equipment the Hirer shall pay for its replacement, or the cost of restoring it to good working order, or allow bright\* or its agent to carry out such work at the Hirer's expense.

8.2. The Hirer shall during the hire period (without prejudice to the liability of the Hirer to the Owner pursuant to Condition 8.1.) keep the Equipment insured for its full replacement value with a reputable insurance company against loss or damage from all risks (excluding third party risks). The Hirer shall notify its insurers that the equipment is on-hire from bright\* and request the insurers to endorse a note of such interest on the policy, naming bright\* as a loss payee. The Hirer shall on demand show to bright\* the policy, the premium receipts and insurance certificate and shall not use or allow the Equipment to be used for any purpose not permitted by the terms and conditions of the said policy or do or allow to be done any act of thing whereby the insurance may be invalidated.

- 8.3. Where any event or accident shall occur which is a risk covered by the Hirer's insurance hereunder, the Hirer shall immediately notify bright\* thereof. The Hirer shall hold any monies received by the same as bright\* directs.

## **9 HIRER'S INDEMNITIES**

- 9.1. The Hirer shall be solely responsible for and hold bright\* fully indemnified against all claims, demands, losses, damages, proceedings, costs and expenses which may be brought against or incurred by bright\* as a result of any accident involving bright\* equipment.
- 9.2. The Hirer shall be solely responsible for and hold bright\* fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses which may be brought against or incurred by bright\* as a result of any breach or default on the part of the Hirer in the discharge of its obligations under any Contract.

## **10 LIMITATIONS OF LIABILITY**

- 10.1 bright\*'s liability for the direct physical damage to tangible property of the Hirer caused by the negligence of bright\*, its employees agents or subcontractors, or by the breach of any Contract shall not exceed £500,000.00 subject to the exclusions set out in Condition 10.2
- 10.2 bright\* shall not be liable for the following loss or damage howsoever caused and even if foreseeable by of in contemplation of bright\*:-
- 10.2.1. loss of profits, business, revenue, goodwill or anticipated savings whether sustained by The Hirer or any other person; or
- 10.2.2. special, indirect or consequential loss other than direct physical damage to tangible property of The Hirer or any other person; or
- 10.2.3. any loss arising from any claim made against bright\* by any other person.

## **11 TERMINATION**

- 11.1 bright\* shall have the right to terminate a Contract forthwith by giving notice in writing if the hirer;-
- 11.1.1. fails to make payment of any sum in accordance with Condition 4; or
- 11.1.2. shall not commit any other material breach of its obligations hereunder and shall not within 14days of notice of such breach remedy the same;
- 11.1.3. shall enter into liquidation whether compulsory or voluntarily otherwise than for the purpose of amalgamation or reconstruction without insolvency or shall compound or make any arrangement with its creditors or shall be the subject of an application for administration order or shall be subject to a proposal under Part 1 of the Insolvency Act 1986 for the composition in satisfaction of its debts.

## **12 CONSEQUENCES OF TERMINATION**

- 12.1 Any termination of a Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party.
- 12.2 On termination of a Contract (howsoever caused) the Hirer shall no longer be in possession of the Equipment with bright\*'s consent and shall unless otherwise agreed with bright\* forthwith return the Equipment to bright\* in good working order.

## **13 FORCE MAJEURE**

Although bright\* shall use all reasonable endeavours to discharge its obligations under a Contract in a prompt and efficient manner, it does not accept responsibility for any failure or delay caused by circumstances beyond its control.

## **14 GENERAL**

- 14.1 No neglect, delay or indulgence by bright\* in enforcing a Contract shall prejudice the rights of bright\* or be construed as a waiver.

bright\* Terms and Conditions - Hire

- 14.2 The Hirer hereby waives all and any future claims and rights of set off against any sums due to bright\* hereunder regardless of any equity, set off or counter-claim on the part of the Hirer against bright\*.
- 14.3 Any notice hereunder shall be in writing and may be served by sending it in a pre-paid first class letter post or delivery if (in the case of a limited company) to the address stated herein, and in any other case, to the last known address of the addressee. In proving service of any notice it shall be sufficient to prove that the envelope containing the notice was properly addressed, stamped and posted. Service shall be deemed to be effective at noon of the second business day following the day of posting and any notice delivered by hand shall be deemed to be effective from the date of such delivery.
- 14.4 The Hirer shall not assign or otherwise transfer all or any part of a Contract.
- 14.5 The formation, construction and performance of all Contracts shall be governed by English Law. The parties hereby agree to submit to the exclusive jurisdiction of the English Courts.

**bright\***

Venture Way  
Priorswood Industrial Park  
Taunton  
Somerset  
TA2 8DE  
T: 01823 339908  
F: 01823 351035

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**bright\* Production Service Ltd - Terms and Conditions of Sales**

**Updated: 31/12/2003**

**1. IN THESE CONDITIONS...**

- 1.1.1 "Buyer" means the person whose order of the Goods is accepted by the Seller;
- 1.1.2 "Contract" means a contract for the sale of goods
- 1.1.3 "Goods" means the goods (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with these conditions;
- 1.1.4 "Seller" means bright\* and group companies.

1.2 The headings in these Conditions are for the ease of reference only and shall not affect their interpretation.

**2 BASIS OF THE SALE**

- 2.1.1 The Seller shall sell and the Buyer shall purchase the Goods subject to these Conditions. Any terms or conditions in the Buyer's order or other documentation of whatsoever kind which are inconsistent with these Conditions shall have no effect.
- 2.1.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the parties.
- 2.1.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into any Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of, any such representations which are not so confirmed.
- 2.1.4 Any advice or recommendations given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendations which is not so confirmed.
- 2.1.5 Any typographical, clerical or other error or omission in any sales literature, quotation , price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on behalf of the Seller.
- 2.1.6 All descriptive and specifications, drawings and particulars of weights and dimensions used by bright\* are approximate only, and are intended only to present a general idea of the goods to which they refer and shall not form part of the contract. Due to continuing development, bright\* reserve the right to change specifications without notice.

### **3 ORDERS AND SPECIFICATIONS**

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer's order (if accepted by the Seller).
- 3.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification. Which do not materially affect their quality or performance.
- 3.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on the terms that the buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damage, charges and expenses incurred by the Seller as a result of any claim.
- 3.5 If all Goods are to be manufactured or any process to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim:
- 3.5.1 for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person: or
- 3.5.2 for negligence or under Consumer Protection Act 1987 which results from the Seller's use of the Buyer's specification.

### **4 PRICE AND PAYMENT**

- 4.1 The price of the Goods shall be the Seller's quoted price, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of goods to reflect any increase in cost to the Seller which is due to a factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in costs of labour, materials or other costs to manufacture, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer to give to the Seller adequate information or instruction).
- 4.3 Except as otherwise stated under the terms of any quotations or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller for delivery of the Goods at the Seller's premises and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4 The price and all other sums due from the Buyer to the Seller shall be increased to include VAT at the current rate.
- 4.5 The Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after the delivery or collection of the Goods unless the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection of (as the case may be) the Seller has tendered delivery of the goods.
- 4.6 The Buyer shall pay the Seller's invoices hereunder within 14 days of the date of invoice. Time shall be of the essence in respect of the payment of all sums due hereunder.
- 4.7 The Seller reserves the right to charge the Buyer interest at the rate of 3% per annum above the mean base rate for the time being of the London Clearing Banks on all invoices which are not paid in accordance with Condition 4.6. such interest being

calculated from a date 30days after the date of invoice until actual payment compounded quarterly and to be payable as well after as before any judgement obtained in respect thereof.

**5 DELIVERY**

- 5.1. Delivery of Goods shall be made to the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 5.2. Any dates quoted for delivery of Goods are approximate only and the Seller shall not be liable for any delay in delivery of the goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the seller in writing.
- 5.3. If the buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery otherwise than any reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault then, without prejudice to any other right or remedy available to the Seller, the Seller may:-
  - 5.3.1. store the Goods until actual delivery and charge the Buyer of the reasonable costs (including insurance) of storage; or
  - 5.3.2. sell the Goods at the best price readily obtainable and (after deducting reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price of the Contract.

**6. RISKS AND PROPERTY**

- 6.1. Risk of damage to or loss of the Goods shall pass to the Buyer:-
  - 6.1.1. in the case of Goods to be delivered at the Seller's premises, at the time of delivery when the Seller notifies the Buyer that the Goods are available for collection; or
  - 6.1.2. in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, at the time when the Seller has tendered delivery of the Goods.
- 6.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the buyer until the Seller has received cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 6.3. Until such times as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of business, but shall account to the Seller for the proceeds of the sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 6.4. Until such time as the property in the Goods passed to the Buyer (and provided the Goods are still in existence and not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon the premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 6.5. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

**7 WARRANTIES AND LIABILITY**

- 7.1. The Seller only warrants that the Goods will be free from defects in material and workmanship to the extent that the Goods carry a manufacturer's warranty. The

Buyer shall be entitled to the benefit of such manufacturer's warranty insofar as the Seller has the power to transfer it.

- 7.2. The above warranty is given by the Seller subject to the following conditions:-
  - 7.2.1. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
  - 7.2.2. the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval.
- 7.3. Subject as expressly provided in these Conditions, and except where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 7.4. Any claim by the Buyer which is based on any defect in the quality or conditions of the Goods shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure.
- 7.5. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under the express terms of Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

## 8. **TERMINATION**

- 8.1. The Seller shall have the right to terminate a Contract forthwith by giving notice in writing if the Buyer:
  - 8.1.1. fails to make payment of any sum in accordance with Condition 4; or
  - 8.1.2. shall commit any other material breach of its obligations hereunder and shall not within 14 days of notice of such breach remedy the same; or
  - 8.1.3. shall enter into liquidation whether compulsorily or voluntarily otherwise than for the purpose of amalgamation or reconstruction without insolvency of shall compound or make any arrangement with its creditors or shall be the subject of an application for an administration order or shall be the subject of any proposal under Part 1 of the Insolvency Act 1986 for a composition in satisfaction of its debts.
- 8.2. Any termination of a Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party.

## 9. **FORCE MAJEURE**

Although the Seller shall use all reasonable endeavours to discharge its obligations under the Contract in a prompt and efficient manner, it does not accept the responsibility for any failure or delay caused by circumstances beyond its control.

## 10. **EXPORT TERMS**

- 10.1. Where the Goods are supplied for export from the United Kingdom, the provision of this Condition 10 shall (subject to any terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 10.2. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

- 10.3. Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered at the Seller's premises and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods act 1979.
- 10.4. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.
- 10.5. Payment of all amounts due to the Seller shall be made by irrevocable letter or credit opened by the Buyer in favour of the Seller and confirmed by a Bank acceptable to the Seller, or, if the Seller has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60days after sight to the order of the Seller at such branch of Lloyds Bank in England as may be specified in the bill of exchange.

**11. GENERAL**

- 11.1. No neglect, delay or indulgence by the Seller in enforcing a Contract shall prejudice the rights of the Seller or be construed as a waiver.
- 11.2. The Buyer hereby waives all and any future claims and rights of set off against any sums due to the Seller hereunder regardless of any equity, set off or counter claim on the part of the Buyer against the Seller.
- 11.3. Any notice hereunder shall be in writing and may be served by sending it in a pre-paid first class letter post or delivery if (in the case of a limited company) to the address stated herein, and in any other case, to the last known address of the addressee. In proving service of any notice it shall be sufficient to prove that the envelope containing the notice was properly addressed, stamped and posted. Service shall be deemed to be effective at noon of the second business day following the day of posting and any notice delivered by hand shall be deemed to be effective from the date of such delivery.
- 11.4. The Hirer shall not assign or otherwise transfer all or any part of a Contract.
- 11.5. The formation, construction and performance of all Contracts shall be governed by English Law. The parties hereby agree to submit to the exclusive jurisdiction of the English Courts.

**bright\***

Venture Way  
Priorswood Industrial Estate  
Taunton  
Somerset  
TA2 8DE